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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-sixth session

SUMMARY RECORD OF THE 1073rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 28 February 1995, at 3 p.m.

Chairman: Mr. GARVALOV

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The meeting was called to order at 3.15 p.m.

GENERAL DEBATE

1. The CHAIRMAN invited the Committee to proceed to a general debate, as decided at the beginning of the session.

2. Mr. WOLFRUM said that he saw the general debate as an opportunity to dispel unease about the role of the Committee, its functioning and the impact of its work and to find ways of improving its response to an evolving situation.

3. That situation was truly frightening and reflected the marked extension, on a global scale and even in countries which had been considered immune from such phenomena, of conflicts with an ethnic dimension or a partially ethnic background, as well as a sharp increase in related acts of violence. At the same time, an alarming proliferation of pseudo-scientific literature in which arguments were advanced to justify the intellectual inferiority of certain ethnic groups in relation to others or the comparative superiority of certain religions or beliefs had the effect of pointing to certain groups of persons as being radically different from, if not actually the foes of, others.

4. To his mind, the origins of conflicts with an ethnic dimension were twofold. In the first place, States themselves, their organs and agents or State-related entities used ethnicity as a political means to particular ends, singling out victims for discriminatory treatment. In the second, groups of private individuals took it upon themselves to behave in a hostile fashion towards others, with the authorities turning a blind eye or reacting too late; in a distressing number of such cases, the disturbance occurred among neighbours who had enjoyed many years of peaceful coexistence.

5. It was open to discussion whether or not the reasons for such conflicts were always the same or differed from place to place. His own view was that, although the background to and pretexts for intolerance and violence might vary, the relation between cause and effect did not. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance had stated that such manifestations might stem from the desire on the part of the community to turn inward and to reserve society's benefits in order to share them with people of the same culture or the same level of development. That was, however, not a justification: did not the notion of "the same culture" itself imply discrimination and how could the "same level" of development be measured?

6. The failure adequately to prepare entrenched societies to confront vast amounts of new information about otherness and to cope with an influx of "other" populations in the form of migrant workers, asylum-seekers, refugees, tourists, etc., carried the germs of inevitable conflict. Of course, preparation meant education, and that was the responsibility not only of Governments, but also of intergovernmental agencies such as UNESCO.

7. On a more positive note, a great many international instruments and mechanisms already existed to combat discrimination. What was urgently required was to make them more effective and to that end he would offer a number of suggestions.

8. In the first place, much improved cooperation and coordination were needed between institutions for the promotion of respect for human rights. By way of example he was circulating the text of a judgement of the European Court of Human Rights on a case, also considered by the Committee, in which the misunderstanding by the former body of the functioning and reasoning of the latter was quite flagrant. Strengthened cooperation and coordination might also be ensured through the regular meetings between the chairpersons of the treaty bodies.

9. The Committee should also focus more on the educational aspects of its own mandate and pay closer attention to the provisions of article 7 of the Convention in dealing with reporting States. Preventive measures and early action to curb dangerous trends should also be reinforced, particularly through the collection, on the basis of requests worded in carefully neutral terms, of relevant information from the States concerned. In that connection, he drew attention to the importance of reassuring States facing the risk of disintegration and thus adopting a defensive posture that neither by implication nor in deed was the Committee disrespectful of their territorial integrity. Special care to adapt the approach to circumstances would surely bear fruit in the form of improved dialogue and cooperation between all concerned.

10. Mr. YUTZIS said that his approach was based on the assumption that the problems with which the Committee was concerned were closely related to the factors of power, economics and fundamentalism in the general sense of the strict maintenance of traditional beliefs.

11. Power was linked with control over objects, with prestige and, sometimes, with both. When societies were in a state of crisis, the holders of power were not slow in seeking scapegoats on whom to unload the burden of blame. In his own experience of investigation, he had been struck by the number of cases in which "foreigners" were singled out for retribution. And it was a feature of modern crises of the kind he had in mind that they contained an often indissoluble mixture of political, economic, cultural, religious, linguistic, ethnic and other historically conditioned ingredients and defied simple analysis. Moreover, the fall of the Roman Empire was being re-enacted in various parts of the modern world, as simmering differences that had long been held in check under the heavy lid of authority broke explosively free with the collapse of central power.

12. Contemporary economics had come to be dominated by a global model, with, as a major consequence, the extension worldwide, of absolute poverty and exclusion. It required no departure from objectivity to identify the victims in great measure by the colour of their skin, as well as by a number of highly visible social, cultural, religious, ethnic and other indicators. Exclusion, especially that generated by economic mechanisms, was a pervasive problem and "foreigners" were among the first to suffer from it. For example, renewed attention was being paid by the authorities in countries such as his own to undocumented persons, i.e. workers without papers, who had previously been undisturbed and whom the faltering economy now wished to shed.

13. Fundamentalism of any kind was an anachronism in contemporary society. For the moment, he would say no more on the subject, apart from pointing out that its Islamic variant was just one among many. Christianity had its fanatics, too, in many regions of the world.

14. In the light of those considerations, the Committee was better placed than any other human rights treaty body to make an informed, in-depth diagnosis of the ills that he had outlined. Yet he had the impression that, year after year and session after session, the Committee did little more than pull a blanket over the sick body, at the same time remaining excessively discreet about its work. Greater dynamism and increased publicity were thus urgently called for. More communication with other treaty and human rights bodies would certainly be useful, but the Committee should first breathe new life into its own activity and broadcast that activity throughout the world. Was that such a utopian objective?

15. A start might be made in the right direction if the Committee took the previous day's discussion with the Special Rapporteur on the former Yugoslavia as the point of departure for drafting an "organic response" to the situation in that part of the world, as an initial exercise in diagnosis. That would be fully in keeping with its duty and obligations.

16. Mr. ABOUL-NASR said that it could hardly be expected that solutions would be found at only one or two meetings. He still had many questions, but not many answers.

17. He did not like the use of the word "fundamentalism" because no religion was fundamentally bad. The fundamental teachings of religion did not advocate the killing of others. Muslim fundamentalists who tried to impose their interpretation of Islam on others by force or Christian fundamentalists who killed doctors because they performed abortions were criminals.

18. If the Committee wished to comment further on the statement made by the Special Rapporteur for the former Yugoslavia, it should not go into great detail. It had to concentrate on what it could do to combat ethnic cleansing, genocide and certain statements made by politicians.

19. The results of the Committee's long struggle against racial discrimination were very disappointing. He had almost lost hope over the past seven or eight years. Perhaps the Committee had not paid enough attention to the importance of education in schools. Moreover, many human rights bodies were politicized. It was fashionable to attack States such as China, Iraq and Iran, but efforts to tackle the situation in Bosnia and Herzegovina had been unrewarding. An International Tribunal had been set up, but it would not work and the guilty would not be brought to trial. Public opinion was being deceived both about Bosnia and Herzegovina and about many countries in Africa.

20. What could the Committee do? Mr. Wolfrum had put forward some good ideas, particularly in respect of education and preventive measures and how to build on them. It would be interesting to hear from the new High Commissioner for Human Rights what he intended to do with regard to problems such as that of Chechnya.

21. He hoped that the Committee would not spend too much time analysing what had gone wrong. The problems that came before it differed from one another simply because conditions obtaining in one part of the world were not the same as those encountered in another.

22. The human rights treaty monitoring bodies were cooperating with one another, but attention should also be paid to cooperation between the treaty monitoring bodies and other United Nations and regional human rights organs and with non-governmental organizations. Debates in the Commission on Human Rights did not appear to be taken very seriously.

23. The Committee had established guidelines for the submission of reports by States parties, but guidelines might also be needed for the procedures to be followed by members at meetings at which States parties' reports were considered, in order to facilitate the proceedings.

24. The world was in a state of crisis. Genocide and ethnic cleansing were taking place and it was difficult to see what the Committee could do about them. The alarm experienced by the Committee in that connection should be reflected in its report.

25. The CHAIRMAN informed the Committee that there would be a meeting with the High Commissioner for Human Rights during the third week of the current session.

26. Mr. RECHETOV said that he agreed with Mr. Yutzis and Mr. Aboul-Nasr about the use of the concept of fundamentalism in connection with Islam. There were Catholic, Protestant and Orthodox Christian fundamentalists, too. If all that was intended was strict observance of the letter of religious law, no harm was done. What was damaging was the association of fundamentalism with aggressive nationalism. As the President of a region of Russia having a large Muslim population had stated, some people who claimed to speak on behalf of Islam were using religion as a weapon of political power. In no way should that be allowed. Fanaticism, extremism and intolerance were alien to real Islamic values, which favoured tolerance, compromise and respect for knowledge and justice. In fact, a major principle of Sharia was the avoidance of causing harm to others.

27. There appeared to be little disagreement in the Committee about the importance to be attached to the various ethnic, religious, political and economic factors and, when members affirmed that one particular factor was more significant in a given case than the others, they did not do so in order to remove the issue from the scope of the Committee's deliberations or to reduce the liability of those responsible for gross violations of human rights or even genocide. The causes of conflict might be different, but the tragic results were the same.

28. Mr. SONG Shuhua said that, although the Committee might discuss general principles, specific problems must receive specific study. In some places, there might be acute religious problems, but, in others, that was not so. The Han Chinese, for instance, tended to have no religious beliefs. Confucianism was not really a religion, but a philosophy. China's minorities, on the other hand, tended to be religious. Buddhism had been imported from India and Islam

had been introduced by Arab traders. All religions had good relations with one another. Roman Catholicism, however, had been brought in by imperialism and was therefore considered a foreign religion. In the past, there had been problems because foreign religious leaders had been associated with aggression.

29. The Committee's discussion should therefore be more specific. The situation in Europe, with a high proportion of developed countries, was very different from that in Asia, with a large number of developing countries. Migration from the third world to developed countries led to difficult situations. In studying them, the Committee should identify the root causes, the present situation and future trends, since it was necessary to understand the past in order to understand the present and to predict the future. The Committee could not find solutions for all situations. Like Mr. Aboul-Nasr, he had no answers to the problems posed, except perhaps in a few specific instances.

30. Mr. de GOUTTES said that, in a general debate of the present kind, it was difficult to find the right approach. There might well be some duplication of work, since many of the suggestions contained in the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance appointed by the Commission on Human Rights could have been made by the Committee itself. On being appointed by the Commission, the Special Rapporteur had been requested to exchange views with other United Nations bodies dealing with the same topic. Could it be said that he had established sufficient contact with the Committee?

31. As the member of the Committee responsible for liaison with the Council of Europe, he had held an exchange of views in October 1994 with the European Commission against Racism and Intolerance and his report on it was now available. He had been able to ascertain the interest displayed by that Commission in the work being done by the Committee. Members of the Commission had asked many questions about such matters as shortcomings in the presentation of reports by States parties, the small number of communications received from individuals or groups of individuals, and the emergency measures developed. The Commission wanted to remain in contact with the Committee in the future and to receive the Committee's annual reports to the General Assembly and any other useful information; it had also committed itself to sending the Committee any documents of interest. A similar body had also been established within the European Union, but it was not yet operational.

32. A meeting of European national institutions, both governmental and non-governmental, for the promotion and protection of human rights had taken place under the auspices of the Council of Europe in November 1994. In one of its recommendations, the meeting had called upon the member States of the Council of Europe to ratify the International Convention on the Elimination of All Forms of Racial Discrimination and to ensure that its provisions were fully implemented; in particular, States were encouraged to withdraw any reservations limiting the scope of the Convention and to allow their citizens to submit communications directly to the Committee.

33. The same meeting had recommended the strengthening of information, education and prevention activities among young people, who were often the target of propaganda by racist groups. The recommendation had placed particular emphasis on the prevention of attempts to disseminate racial hatred and racist ideologies using new technologies, such as computer networks and video games.

34. Mr. Wolfrum had referred to a judgement of the European Court of Human Rights of September 1994. The European Court had criticized the Supreme Court of Denmark for a decision which stated that a journalist had broken the law by repeating the racist remarks of a group known as the "green jackets". The European Court's judgement had been passed by a majority of 12 votes to 7; the judges who had voted against the decision had drawn up a formal statement explaining their position, which had emphasized the highly aggressive nature of the racist remarks in question, and had stated that, despite the great importance of the right to freedom of expression, it must not be used to justify the dissemination of racial hatred. The European Court had made a number of references to the International Convention on the Elimination of All Forms of Racial Discrimination and the Committee during its deliberations. The Committee had adopted General Recommendation XV (42) on its interpretation of the relationship between the right to freedom of opinion and expression and the need to prevent racial discrimination. The Committee had also discussed the above case during its consideration of Denmark's latest periodic report in 1990 (CERD/C/SR.864 and SR.865).

35. He considered it important that the Committee should maintain and extend its links with the Council of Europe. Perhaps the Chairman might be prepared to address the Council in his official capacity.

36. Mr. ABOUL-NASR said he agreed that the Committee should maintain close links with regional organizations throughout the world. He asked Mr. de Gouttes whether the Council of Europe had taken any specific action in cases of serious violations of human rights, such as those in Bosnia and Herzegovina, for example, or whether it merely supported the position taken by many European States, which was to refrain from action themselves and to block any initiatives by the United Nations Security Council.

37. Mr. de GOUTTES said that the Council of Europe had undertaken many initiatives to try to resolve the situation in Bosnia and Herzegovina. The Parliamentary Assembly of the Council of Europe had adopted resolutions on the subject, although they were, unfortunately, not legally binding, and the Council was also trying to set up a court to try alleged human rights violations in the region. However, nothing had really been achieved as yet.

38. Mr. WOLFRUM pointed out that the Council of Europe had authority only over its own member States. However, on several occasions in the past, the Council had insisted on changes in the legislation of would-be member States before they were admitted to membership. For instance, Croatia had adopted legislation to protect minority groups; Estonia and Lithuania had changed their citizenship laws and Hungary had changed its law on minorities.

39. The CHAIRMAN, speaking as a member of the Committee, said that self-determination was an issue in all the current conflicts in eastern Europe, a state of affairs which the Committee might inadvertently have helped to encourage by its emphasis on the rights of national, linguistic, religious and other minorities. Many of those minority groups felt that secession from the parent State was the only way to solve their problems. They believed that they had the right to self-determination and no pronouncements by the Committee were going to change that opinion. For instance, he had tried, in vain, to convince people in his native Bulgaria of his own view of the issue, namely, that a people had the right to self-determination, but a minority group or community did not.

40. The international community itself was not consistent on the issue of self-determination. For instance, he had read a memorandum of a meeting of the Council of Europe whose author had argued that minority groups who had lived in a certain country for hundreds of years should be regarded as a part of the nation and should accordingly be considered to have a right to self-determination. Such a view set a most dangerous precedent which would, if universally adopted, completely change the interpretation of ethnic-based conflicts in Europe.

41. Moreover, the Council of Europe had just adopted the Framework Convention on the Rights of National Minorities, which not only contained no proper definition of the concepts of "minority" or "national minority", but also ignored the rights of religious, linguistic and other minorities, which were specifically mentioned in a number of international instruments and, in particular, in article 27 of the International Covenant on Civil and Political Rights and the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. In cases such as Rwanda, Burundi and Cyprus, the United Nations had adopted the clear position that only a people, and not a community, enjoyed the right to self-determination, so there was obviously an inconsistency between the views of regional organizations and those of the United Nations.

42. The Committee should also be aware that States parties to the Convention were often concerned about preserving their territorial integrity and might be unwilling to answer certain questions or requests for information which they feared might further the cause of separatist groups at home. The Committee should accordingly bear in mind the statements on territorial integrity made by other United Nations bodies.

43. Referring to the relationship between the right to freedom of expression and the need to prevent racial discrimination, he expressed concern that certain States parties might begin to question the mandatory nature of article 4 of the Convention, which dealt with that issue, just as others had questioned the definition of "racial discrimination" contained in article 1 of the Convention. He was disturbed by the growing violence of racist activities in certain democratic and prosperous States: if those States chose to value their commitment to freedom of speech more highly than their obligations under article 4 of the Convention, nothing could be done to prevent the dissemination of racial hatred until it actually tipped over into violence. Such a situation would undermine many of the Committee's prevention activities, including the universally praised early warning procedure.

44. Another matter of concern to him, which he had raised at the Committee's 1071st meeting and also with the High Commissioner for Human Rights and the Council of Europe, was that, even today, there was a tendency in the United Nations to apply only one set of standards concerning human values and human rights to all societies, reflecting an inner conflict within the United Nations which should be resolved. That was a point already made by Mr. Philip Alston in his report on effective implementation of international instruments on human rights (A/44/668). As he saw it, that conflict was partly responsible for the tendency to equate Islamic fundamentalism with Islam.

45. In December 1994, he had had the opportunity to inform participants in the general discussion in the Committee on Economic, Social and Cultural Rights on the right to education and public information about the relevant provisions contained in the International Convention on the Elimination of All Forms of Racial Discrimination and about the Committee's views on the right to education, particularly that basic human rights education for children was essential if any progress was to be made towards combating racial discrimination.

46. Stressing the importance of the Committee's general debate on the issues now under discussion in developing a theoretical framework for subsequent discussions on practical ways and means of enhancing the Committee's effectiveness and prestige, he said that, if human rights policy was indeed the priority for the United Nations, as had been recognized at the World Conference on Human Rights in Vienna, it should not be confined to a limited number of bodies within the United Nations, but should be adopted at the very highest level. Faced with the new challenges in human rights, the Security Council should consider preventive action in specific, potentially dangerous situations before they erupted into full-scale war.

47. Mr. RECHETOV said that the issue of the right to self-determination was not so much one of international law, which had been quite clear on the subject since the adoption in 1970 of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, but one of the sometimes confused perception of that right by the international community and even major world leaders. As he understood it, any part of a population, including one defining itself as an ethnic group, was entitled to certain rights, such as cultural and territorial autonomy, and could enjoy various forms of federalism. The problem arose when the right to self-determination was coupled with the right to secession. Although Lenin had declared that the only form of self-determination was secession, that position was not consistent with the right of nations to self-determination under international law, which did not recognize the right to secession as an integral part of the right to self-determination, a principle that had been confirmed by the former Conference on Security and Cooperation in Europe. The only instance described in international law in which the right of a group to secede might be envisaged was when a group or ethnic minority was denied systematically and over a long period of time the right to participate in the management of the affairs of the country.

48. Where the Committee was concerned, the right to self-determination should be taken into account as a crucial aspect of the human and other rights of ethnic groups. Statements of principles were one thing, however, and interpretations another, as could be seen, for instance, in the debate with Islamic fundamentalists. The differing interpretations complicated the Committee's dialogue with States parties and he agreed with Mr. Wolfrum that reporting States should be asked to provide additional information in order to clarify matters. Governments which, in the Committee's judgement, had failed to comply with the Convention in respect of certain situations in their territory were sometimes reluctant to recognize their mistakes and take appropriate measures, fearing that some ethnic groups might take the opportunity to use their acknowledged right to self-determination for purposes other than what the Committee meant by that right. He therefore agreed with Mr. Wolfrum's idea that the Committee might draft a general recommendation explaining its understanding of the right to self-determination as a general basis for dialogue with States parties. However, while drawing a particular State party's attention to that general recommendation and to the requirements of international law, the Committee should further elaborate on its understanding in specific cases when addressing that State party.

49. Mr. CHIGOVERA said that the Committee's discussion with the Special Rapporteur on the former Yugoslavia had raised the question of the need for an improved information-gathering mechanism within the Committee, especially in the context of its early warning and urgent procedures. The goodwill mission sent to Kosovo had suffered somewhat from a lack of adequate information. Delegations to the Third Committee of the General Assembly at its forty-ninth session had expressed concern about the emergence of xenophobia and racism against vulnerable groups such as immigrants, refugees and minorities, and several of them had recommended that the Committee should pay more attention to such issues. Those were the kind of situations that fell within the Committee's mandate regarding early warning procedures. Bearing in mind those considerations, he drew attention to rule 87, paragraph 3, of the amended rules of procedure providing for the designation of a special rapporteur who might be entrusted with the task of data collection, which was crucial to an understanding of both the past and present circumstances of a conflictual situation.

50. Mr. SHERIFIS said that the Committee should give careful consideration to the all important question of self-determination and adopt a position on the subject. He was reminded of the generally accepted position in the General Assembly at the time of the discussions on Fiji and self-determination, when it had been clear that no one had been willing to recognize that self-determination should be exercised by minorities, communities or groups in a manner conducive to the fractioning of member States as they had been known at that time. He would be most interested to hear the views of members of the Committee who were academics with particular expertise in international law, particularly Mr. Wolfrum, on the subject of the exercise of the right to self-determination within a given country by the people of the country as a whole and by its individual component parts.

51. Mr. SHAHI said that Mr. Rechetov had raised an interesting point on the right to self-determination when he had referred to the right of a minority to secede only when it had been denied all participation in the management of the

affairs of a country. That seemed to be a new construction placed on the term "self-determination". As he understood it, under the tsars, Russia had been governed as a single, centralized State, not as a federation. Lenin had then entrusted Stalin with the question of nationalities and Stalin had elaborated on the rights of different nationalities and on the right to self-determination, which in practice, only Finland and Poland had been allowed to exercise, whereas, in general, proletarian internationalism or socialist interests had been regarded as overriding the right to self-determination. It was, however, interesting to note that, in successive Soviet Constitutions, the republics had been given the right to self-determination even to the point of secession, although, of course, that right had not been exercised in practice. Mr. Wolfrum and other speakers might wish to shed light on that doctrine of the principle of self-determination as expounded by Stalin and subsequently embodied in successive Soviet Constitutions. The new definition of when a minority might exercise the right to secede seemed to be a departure from that historical path.

52. Mr. WOLFRUM said that his first point, which might respond in part to Mr. Shahi's comments, was that a distinction should be drawn between self-determination at the national level and at the international level. Regarding the latter, the right of self-determination had been introduced into international relations by President Wilson and later embodied in the Charter of the League of Nations and the United Nations. He agreed broadly with Mr. Rechetov that the concept of the right to self-determination did not imply the right to secession per se; that was a later misconception. He would express Mr. Rechetov's statement that secession was not recognized under international law as being part of self-determination rather differently: it was understood in international law that self-determination and secession were two different principles. There was a connection, but the latter did not follow on from the former. In that regard, he, like most other academics, did not share the Chairman's view that national minorities had the right to self-determination. What was clear was that there were no grounds whatsoever in international law to justify the existence of a State that was, so to speak, ethnically pure.

53. With regard to what were called the "sources of international law", the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted in 1970, embodied the two principles of self-determination and the integrity of States in international law on equal terms. That Declaration reflected international law as it now stood.

54. Another very important point was that the decision to form two States or only one should be taken by mutual agreement between the two parties concerned, as had properly been done in the case of Czechoslovakia, i.e. between the group wishing to secede and the remaining group. By way of illustration, if, for instance, Bavaria wished to secede from Germany, the agreement of the remaining part of Germany was important, since that country would not be the same without Bavaria.

55. At the national level, national law might confer special rights on States or other entities within a country, as the Russian Constitution had done. A federal State might provide for the right to secession, but that was no longer

a matter of international law. Only international law was of interest to the Committee and, as he had said, the right to self-determination did not mean the right to secession in international law. Since it might be interpreted that way by some countries, however, the Committee should avoid references to the right to self-determination as far as possible. He would not raise the question of decolonization, which was an entirely different matter.

56. The CHAIRMAN said he wished to clarify an apparent misunderstanding. He had not said that national minorities had the right to self-determination, a right that was recognized in the relevant international instruments as an inherent right of peoples. Some confusion had arisen between the provisions of the Covenants, the 1970 Declaration on Principles of International Law, referred to earlier, and the Declaration on the Granting of Independence to Colonial Countries and Peoples.

The meeting rose at 6 p.m.